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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 MITCHELL ENGINEERING,

No. C 08-04022 SI

9 Plaintiff,

**ORDER RE: DEFENDANTS' MOTION TO
COMPEL**

10 v.

(Docket No. 174)

11 CITY AND COUNTY OF SAN FRANCISCO,
12 et al.,

13 Defendant.
14 _____/

15 The City has filed a motion to compel Mitchell to produce to produce (1) financial documents
16 identified during the deposition of Rene Lazure, Mitchell's CEO, and (2) emails about Mitchell projects.

17 **I. Financial Documents**

18 The City first moves to compel the production of "numerous financial documents" identified by
19 Mr. Lazure during his deposition, including quarterly financial reports, backup data, project-specific
20 reports, and profit and loss reports. The City acknowledges that after Mr. Lazure's deposition, Mitchell
21 produced "monthly closing binders" for the time period at issue, but states that these binders "do not
22 appear" to contain some of the documents identified by Mr. Lazure, including financial reports stored
23 electronically rather than in hard copy.

24 Mitchell has explained in its letter brief, however, that it has already produced all documents in
25 its possession that were referenced during Mr. Lazure's deposition. Mitchell has produced, in total, 106
26 boxes of paper documents, as well as its entire "Timberline" database in which it electronically stores
27 accounting data. Mr. Lazure testified during his deposition that the Timberline database essentially
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1 contains all of Mitchell's financial information. Mitchell's production is therefore sufficient to meet
2 the request, and the motion to compel the production of additional financial documents is DENIED.

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4 **II. Email Production**

5 The City also moves to compel production of emails pertaining to Mitchell's performance on
6 non-City construction projects. The Court has previously dealt with this dispute, and has found that
7 emails relating to the non-City projects are relevant to the issue of Mitchell's financial condition. *See*
8 April 13, 2010 and May 4, 2010 Orders (Docket Nos. 107, 122). In the prior orders, the Court informed
9 the parties that it was unable to determine whether each of the proposed search terms was designed to
10 uncover relevant information, and directed the parties to meet and confer to arrive at a reasonable list
11 of terms. The City proposed a new set of 188 search terms on July 9, 2010. Mitchell then proposed that
12 in lieu of conducting an email search for each of the 25 custodians encompassed by the request, it would
13 provide hard copies of "job files" for the non-City projects. The City objects to that proposal on the
14 grounds that paper files are less searchable than electronic files and likely will not contain all relevant
15 emails, and moves to compel production of emails using its proposed list of search terms.

16 The Court recognizes the City's desire to obtain the information it seeks in the most convenient
17 format. However, after waiting more than two months since this dispute was last raised to pursue
18 production of emails, it is unreasonable for the City to refuse to accept production of documents that
19 will substantially provide it with the information it seeks. The Court has already issued a summary
20 judgment order in this case, and trial is presently set to begin on August 30, 2010. At this late juncture,
21 the Court is not inclined to order Mitchell to run 188 search terms – whose relevance the Court cannot
22 determine – through its email databases when Mitchell has proposed a less burdensome alternative that
23 will enable it to make immediate production. The motion to compel is DENIED as to email production
24 and the parties are directed to proceed with Mitchell's proposed production of job files.

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26 **III. Additional Depositions**

27 The City also states that in the event Mitchell plans to pursue its request to take an eleventh
28 deposition, the City wishes to re-depose Curtis Mitchell and Michael Silva. As Mitchell has stated that

1 it is not seeking any additional depositions, the Court need not address the City's request.

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3 **IT IS SO ORDERED.**

4 Dated: July 27, 2010



SUSAN ILLSTON
United States District Judge